

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK****ANTHONY MARTINEZ,****Plaintiff,
-against-****THE ARCHDIOCESE OF NEW YORK, PROVINCE OF
THE IMMACULATE CONCEPTION OF THE THIRD
ORDER REGULAR OF ST. FRANCIS OF PENANCE,
FRANCISCANOS DE LE TERCERA ORDEN
REGULAR, ST. LUKE'S ROMAN CATHOLIC
CHURCH, ST. LUKE SCHOOL and JOHN DOES 1-20,****Defendants.**

To the abovenamed Defendants

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, and the Plaintiff's Attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
October 28, 2019

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Index No.:

Plaintiff Designates
NEW YORK COUNTY
County as the place of trial

The basis of venue is the Defendant
PRINCIPAL PLACE OF
BUSINESS

SUMMONS**Plaintiff reside at****County of**

Defendants' Addresses:

THE ARCHDIOCESE OF NEW YORK
1101 1st Avenue, New York, NY 10022

PROVINCE OF THE IMMACULATE
CONCEPTION OF THE THIRD ORDER
REGULAR OF ST. FRANCIS OF PENANCE,
788 Monastery Rd, Hollidaysburg, PA 16648

FRANCISCANOS DE LE TERCERA ORDEN REGULAR
Avinguda de Fra Juan Llabres, 1, 07600 S/Arenal, Illes Balears, Espana.
C/O PROVINCE OF THE IMMACULATE
CONCEPTION OF THE THIRD ORDER
REGULAR OF ST. FRANCIS OF PENANCE,
788 Monastery Rd, Hollidaysburg, PA 16648

ST. LUKE'S ROMAN CATHOLIC CHURCH,
623 East 138th Street, Bronx, NY 10454

ST. LUKE SCHOOL
608 East 139th Street, Bronx, NY 10454

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

ANTHONY MARTINEZ**Index No. _____****Plaintiff,
-against-****VERIFIED COMPLAINT****THE ARCHDIOCESE OF NEW YORK;
PROVINCE OF THE IMMACULATE
CONCEPTION OF THE THIRD ORDER
REGULAR OF ST. FRANCIS OF PENANCE;
FRANCISCANOS *DE LA* TERCERA ORDEN
REGULAR; ST. LUKE'S ROMAN CATHOLIC
CHURCH, ST. LUKE SCHOOL; and JOHN
DOES 1-20,****JURY TRIAL DEMANDED****Defendants.**

**Plaintiff ANTHONY MARTINEZ, by and through the undersigned counsel, complaining
of Defendants upon information and belief, alleges as follows:****JURISDICTION AND VENUE**

1. This Court has personal jurisdiction over the Defendants pursuant to Section 301 and 302 of the CPLR because the Defendants committed tortious acts within the State of New York. This complaint arises from the sexual abuse of Plaintiff Anthony (Antonio) Martinez by Rev. Msgr. Robert B. Mulcahey and Rev. Msgr. Miguel Juan, T.O.R., during the years of 1964 – 1966 when Plaintiff was approximately 11 years of age. This sexual abuse occurred while Plaintiff was a student at Saint Luke School in Bronx, New York and consisted of fondling of genitals, kissing, oral sex, forced masturbation and penetration of the anus.

2. Venue is proper because the Defendant Archdiocese of New York has its principal place of business in New York County.

3. The provisions of Section 1602 of the CPLR do not apply to the within action

including nondelegable duty and/or the doctrine of *respondeat superior*.

4. Plaintiff brings this suit within the extended time period as provided for in Section 208 of the Civil Practice Law.

5. Jurisdiction is proper because this Complaint seeks monetary damages in excess of \$25,000.00, exclusive of interest, costs, and attorneys' fees.

PARTIES

6. Plaintiff is an adult resident of the State of Iowa and is otherwise *sui juris*.

7. Defendant Archdiocese of New York is a Roman Catholic Diocese and is an unincorporated non-profit business entity licensed to and doing business in the State of New York with a principal place of business at 1011 1st Avenue, New York, New York 10022.

8. Defendant Province of the Immaculate Conception of the Third Order Regular of St. Francis of Penance ("T.O.R. American Province") is a non-profit corporation incorporated under the laws of the State of Pennsylvania doing business in the State of New York with a primary place of business at 788 Monastery Rd, Hollidaysburg, PA 16648. Defendant T.O.R. American Province was formed as a result of a split between the clergy of the United States branch of the Third Order Regular of St. Francis of Penance. Following this split, Defendant T.O.R. American Province expanded to several other states, including New York. In order to reach even larger numbers of people, including the Spanish-speaking populaces in New York and Texas, Defendant Franciscans T.O.R. undertook to invite several clergymen from the Spanish Province of the Third Order Regular of St. Francis of Penance, and agreed to supervise them at all times that they were located within the states. Due to this relationship, at all times material, Franciscans T.O.R. was acting by and through, had a special relationship with, and had

a degree of responsibility or control over, Fr. Miguel Juan, whose acts or omissions are alleged herein and are the subject of this Complaint.

9. Defendant Franciscanos de la Tercera Orden Regular ("T.O.R. Spanish Province") is a religious corporation incorporated under the laws of the Nation of Spain with a primary place of business at AVINGUDA DE FRA JUAN LLABRES, 1, 07600 S'ARENAL, ILLES BALEARS, ESPANA. Defendant T.O.R. Spanish Province was formed as the Spanish Province of the Third Order Regular of St. Francis of Penance and was present in New York City at the request of the Province of the Immaculate Conception of the Third Order Regular of St. Francis of Penance in order to minister to the Spanish-speaking populaces within the city. At all times material, Franciscans T.O.R. was acting by and through, had a special relationship with, and had a degree of responsibility or control over, Fr. Miguel Juan, whose acts or omissions are alleged herein and are the subject of this Complaint.

10. Defendant St. Luke's Roman Catholic Church is a Roman Catholic parish within the Archdiocese of New York and an unincorporated New York business entity with a principal place of business at 623 East 138th Street, Bronx, NY 10454.

11. Defendant St. Luke School is a Roman Catholic Archdiocesan secondary school within the Archdiocese of New York and a non-profit business entity with a principal place of business at 608 East 139th Street, Bronx, NY 10454.

12. Rev. Msgr. Robert B. Mulcahey was an ordained Roman Catholic priest employed by, and an agent of, Defendant Archdiocese of New York.

13. From 1931 to 1966, Rev. Msgr. Robert B. Mulcahey was a pastor and the individual in charge of Saint Luke School, Bronx, New York.

14. From 1931 to 1966, Rev. Msgr. Robert B. Mulcahey was a pastor and the

individual in charge of Saint Luke's Roman Catholic Church, Bronx, New York.

15. From 1955 to at least 1962, Rev. Msgr. Miguel Juan, T.O.R. was a pastor and the individual in charge of St. Benedict the Moor Roman Catholic Church in Manhattan, New York. Since 1953, the St. Benedict the Moor Church had been staffed by members of Defendant T.O.R. Spanish Province at the behest of Defendant T.O.R. American Province in order to proselytize to the growing Hispanic population in Hell's Kitchen.

16. In 1960, Rev. Msgr. Miguel Juan started working at Saint Luke School for the purpose of educating the Spanish-speaking students at the school.

17. At all times material, Rev. Msgr. Robert B. Mulcahey and Rev. Msgr. Miguel Juan remained under the direct supervision, employ, and control of Defendant Archdiocese of New York as pastors and employees of Saint Luke School.

18. At all times material, Rev. Msgr. Robert B. Mulcahey and Rev. Msgr. Miguel Juan remained under the direct supervision, employ, and control of Defendant Archdiocese of New York as employees of Saint Luke's Roman Catholic Church.

19. Plaintiff is presently unable to ascertain the identities and capacities of Defendants JOHN DOES 1-20 and, therefore, has named said Doe Defendants fictitiously; said Doe Defendants are in some manner presently unknown to Plaintiff, responsible for the injuries and damages described herein and/or are related to the named Defendants and are the teachers, agents, representatives, subsidiaries, parent companies, employers, employees, partners, limited partners, joint venturers, insurers and/or independent contractors of the named Defendants and/or had duties of reasonable care to Plaintiff and the breach of one or more of the foregoing duties caused the injuries and damages described herein. Plaintiff will name said Doe Defendants when their identities and capacities are determined.

STATEMENT OF FACTS

20. In 1964, when Plaintiff was 11 years old, Plaintiff was a student at Saint Luke School, Bronx, New York.

21. During this same time period, Rev. Msgr. Mulcahey was the pastor and in charge of Saint Luke School. He was also one of the School's basketball coaches.

22. After Plaintiff started playing on the basketball team, he found himself in the locker room with Rev. Msgr. Robert B. Mulcahey on several occasions.

23. In the locker room, Rev. Msgr. Robert B. Mulcahey would "help" Plaintiff and others with their uniforms. Rev. Msgr. Mulcahey's policy was that all players must wear a jock strap.

24. While Rev. Msgr. Robert B. Mulcahey was "helping" Plaintiff with his jock strap, Mulcahey would place his hands inside Plaintiff's shorts and quickly fondle his genitals, claiming to "fix" his jock strap.

25. Unfortunately, this was just a prelude to much more severe abuse that would take place in Reverend Monsignor Mulcahey's office.

26. Approximately in the years of 1964 - 1966, Mulcahey began calling Plaintiff into his office on random occasions. There, Plaintiff was subjected to horrific sexual abuse.

27. Initially, when Mulcahey called Plaintiff into his office, Mulcahey would fondle Plaintiff's genitals. After several visits to his office, Mulcahey would force Plaintiff to masturbate him. As the visits progressed, Mulcahey began to perform oral sex on Plaintiff while digitally penetrating Plaintiff's anus.

28. Rev. Msgr. Miguel Juan was present during several of these office encounters between Rev. Msgr. Robert B. Mulcahey and Plaintiff. While Mulcahey was sexually assaulting

Plaintiff, Rev. Msgr. Juan would observe Rev. Msgr. Mulcahey's actions instead of stopping them.

29. These horrific actions continued, and the sexual assaults progressed to Mulcahey raping Plaintiff (penetrating Plaintiff's anus with his penis).

30. On two separate occasions, both Rev. Msgr. Robert B. Mulcahey and Rev. Msgr. Miguel Juan called Plaintiff into the office. Once inside, they offered him something to drink.

31. After consuming the beverage, which Plaintiff recalls tasting like orange juice mixed with something, Plaintiff passed out. When he woke, he found his pants pulled down to expose his lower half and his rectum hurting as if it had been penetrated.

32. After returning home on both occasions, Plaintiff's mother would discover blood in Plaintiff's underwear.

33. As a direct result of both Rev. Msgr. Robert B. Mulcahey and Rev. Msgr. Miguel Juan's sexual abuse of Plaintiff, Plaintiff has suffered and will continue to suffer great pain of mind and body, severe and permanent emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, suicidal ideation, humiliation and psychological injuries, was prevented and will continue to be prevented from performing his normal daily activities and obtaining the full enjoyment of life, has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling, all to Plaintiff's damage in excess of the jurisdiction of all lower courts.

FIRST CAUSE OF ACTION
NEGLIGENCE/GROSS NEGLIGENCE AGAINST DEFENDANTS

34. Plaintiff realleges and incorporates all previous paragraphs as if set forth fully herein.

35. Plaintiff was raised in a devout Roman Catholic family, regularly celebrated

mass, received the sacraments, and participated in church-related activities. Plaintiff, therefore, developed great admiration, trust, reverence, and respect for Defendants Archdiocese of New York, T.O.R. American Province, T.O.R. Spanish Province, and their agents.

36. Defendants held Rev. Msgr. Robert B. Mulcahey and Rev. Msgr. Miguel Juan out as qualified Roman Catholic priests and/or school leaders, and undertook the education, religious instruction, and spiritual and emotional guidance of Plaintiff. Defendants and their agents exercised a direct role over Plaintiff. Accordingly, Plaintiff placed trust in Defendants so that Rev. Msgr. Mulcahey and Juan and its agents gained superiority and influence over him. Defendants entered into a special relationship with Plaintiff and his family

37. By holding both Rev. Msgr. Mulcahey and Msgr. Miguel Juan out as safe to work with children, and by undertaking the custody, supervision of and/or care of the minor Plaintiff, Defendants entered into a special relationship with Plaintiff. Because Plaintiff was a minor, and because Defendants undertook the care and guidance of the then vulnerable Plaintiff, Defendants held a position of empowerment over him.

38. Defendants, by holding themselves out as able to provide a safe environment for children, solicited and/or accepted this position of empowerment. This empowerment prevented Plaintiff from effectively protecting himself. Defendants thus entered into a special relationship with Plaintiff.

39. By holding themselves out as safe, moral and trusted institutions to Plaintiff's parents, Defendants induced Plaintiff's parents to entrust their child to Defendants and thereby deprived him the protection of his family.

40. At all times material, Rev. Msgr. Robert B. Mulcahey and Rev. Msgr. Miguel Juan's sexual abuse of Plaintiff was foreseeable. The problem of clergy sexual abuse of minors

is well documented throughout the history of the Roman Catholic Church. As far back as 1051, St. Peter Damian wrote in the *Book of Gomorrah* that clergy who defiled boys should be dismissed from holy orders. (*Book of Gomorrah*, Ch. 6) Later, St. Peter Damian wrote in his *Rule of the Monastery of Compludo* about the punishment for "A cleric or monk who seduces youths or young boys" being public flogging, loss of tonsure and six months in jail, among other punishment. In 1143 or 1144, a professor at the University of Bologna named Gratian, known the "Father of the Science of Canon Law," in his work the *Decretum*, identified the sexual sin by a priest that he called *stuprum pueri*, which is the sexual use of boys by an adult male.

41. In 1961, the Vatican issued an instruction on the training of candidates for the priesthood, based upon the 1917 Code of Canon Law, stating:

Advancement to religious vows and ordination should be barred to those who are afflicted with evil tendencies to homosexuality or pederasty, since for them the common life and priestly ministry would constitute serious dangers.

42. The Catholic Church's knowledge that Catholic clergy were sexually abusing minors continued through the Middle Ages and into recent history. In 1962, Pope John XXIII approved the publication *De Modo Procedendi in Causis Solicitationis*, a special procedural law addressing solicitations of sex in the confessional. This document contained instructions prohibiting clergy from having sex with minors under the age of sixteen. This document was distributed to every bishop and major religious superior in the world. It was to be kept by them with the deepest secrecy. This document reflected the Catholic Church's insistence on maintaining the highest degree of secrecy regarding the worst sexual crimes perpetrated by clergy.

43. In 1947, a priest named Fr. Gerald Fitzgerald founded a religious order for priests called the Servants of the Paracletes. This religious order was founded to assist and treat Catholic clergy who experienced mental health problems. By 1952, Fr. Fitzgerald wrote that he

had already treated handfuls of priests who had sexually abused minors. By 1963, the Paracletes were treating so many sexually abusive clergy that they developed a shorthand code, "Code 3," to describe the offense. By 1966, the Paracletes began specializing in treatment of pedophile Catholic clergy.

44. As early as 1971, the issue of sexual misconduct by clergy was being discussed in the Commonwealth of Massachusetts. Bishop Bernard Flanagan, Bishop of Worcester (Massachusetts) testified that, as early as February of 1971, there had been discussions about sexual misconduct among priests. According to Bishop Flanagan, "I think by 1971 I had heard of other cases of this type [sic] sexual misconduct and I knew that they were taking place in other dioceses too."

45. That same year, Dr. Conrad Baars and Dr. Anna Terruwe presented a scholarly paper titled "The Role of the Church in the Causation, Treatment and Prevention of the Crisis in the Priesthood" to the 1971 Synod of Bishops at the Vatican and to the U.S. Conference of Catholic Bishops about psychiatric problems in Catholic clergy and how psychosexual immaturity manifested itself in heterosexual and homosexual activity.

46. In 1985, the public prosecution of a priest in Lafayette, Louisiana led to the creation of the 100-page document titled "The Problem of Sexual Molestation by Roman Catholic Clergy: Meeting the Problem in a Comprehensive and Responsible Manner" by Fr. Thomas Doyle, F. Ray Mouton and Fr./Dr. Michael Peterson. This document was distributed to every Catholic Bishop and religious order ordinary in the United States. A substantial portion of this document describes how significant the sexual abuse of children by Catholic clergy had become.

47. In 1990, psychologist and priest A.W. Richard Sipe published a study involving

1,500 priests that concluded that six (6) percent of priests were sexually involved with minors.

48. At all times material, Rev. Msgr. Robert B. Mulcahey and Rev. Msgr. Miguel Juan were employed by Defendants Archdiocese of New York, T.O.R. American Province, and/or T.O.R. Spanish Province at St. Luke School.

49. At all times material, Rev. Msgr. Robert B. Mulcahey and Rev. Msgr. Miguel Juan remained under the direct supervision, employ, and control of Defendants Archdiocese of New York, T.O.R. American Province, and/or T.O.R. Spanish Province.

50. At all times material, Rev. Msgr. Robert B. Mulcahey and Rev. Msgr. Miguel Juan remained under the direct supervision, employ, and control of Defendant St. Luke School.

51. At all times material, Rev. Msgr. Robert B. Mulcahey and Rev. Msgr. Miguel Juan remained under the direct supervision, employ, and control of Defendant St. Luke's Roman Catholic Church.

52. Defendants allowed Rev. Msgr. Robert B. Mulcahey and Rev. Msgr. Miguel Juan to have unsupervised and unlimited access to minor children at St. Luke School, located within the Archdiocese of New York in Bronx, New York.

53. Upon information and belief, before Plaintiff was sexually abused by Rev. Msgr. Robert B. Mulcahey and Rev. Msgr. Miguel Juan, Defendants had actual or constructive knowledge of material facts regarding Rev. Msgr. Robert B. Mulcahey and Rev. Msgr. Miguel Juan's sexual misconduct, impulses, and behavior.

54. Despite clear indications of danger, Defendants took no steps to discover the specific nature of Rev. Msgr. Robert B. Mulcahey and Rev. Msgr. Miguel Juan's problems or to determine whether they were fit to work with children or to protect children from him, thereby increasing the likelihood that Plaintiff would be harmed.

55. Defendants owed Plaintiff a duty of reasonable care because they assumed duties owed to Plaintiff and had superior knowledge about the risk that Rev. Msgr. Robert B. Mulcahey and Rev. Msgr. Miguel Juan posed to Plaintiff, the risk of abuse in general in their programs, and/or the risks that their facilities posed to minor children. Defendants had the duty to protect the moral purity of Plaintiff and other Roman Catholic children within the Archdiocese of New York.

56. Defendants owed Plaintiff a duty of reasonable care because they assumed that duty and because they solicited youth and parents for participation in their programs.

57. Defendants owed Plaintiff a duty of reasonable care because they undertook custody of minor children, including Plaintiff.

58. Defendants owed Plaintiff a duty of reasonable care because they promoted their facilities and programs as being safe for children.

59. Defendants owed Plaintiff a duty of reasonable care because they held out their agents, including Rev. Msgr. Robert B. Mulcahey and Rev. Msgr. Miguel Juan, as safe to work with children.

60. Defendants owed Plaintiff duty of reasonable care because they encouraged parents and children to spend time with their agents and/or encouraged their agents, including Rev. Msgr. Robert B. Mulcahey and Rev. Msgr. Miguel Juan, to spend time with, interact with, and recruit children.

61. Defendants had a duty to Plaintiff to protect him from harm because Defendants' actions created a foreseeable risk of harm to Plaintiff.

62. Defendants breached their duties by exposing Plaintiff to priests whom Defendants knew or should have known were pedophiles and/or dangerous to children.

63. Defendants breached their duties by recruiting, hiring, and maintaining Rev. Msgr. Robert B. Mulcahey and Rev. Msgr. Miguel Juan in a position of authority over children.

64. Defendants breached their duties by exposing Rev. Msgr. Robert B. Mulcahey and Rev. Msgr. Miguel Juan to children.

65. Defendants breached their duties by leaving Rev. Msgr. Robert B. Mulcahey and Rev. Msgr. Miguel Juan alone with children unsupervised.

66. Defendants breached their duties by inducing Plaintiff and his parents to entrust Plaintiff to Rev. Msgr. Robert B. Mulcahey and Rev. Msgr. Miguel Juan.

67. Defendants breached their duties by failing to follow policies and procedures designed to prevent child sex abuse and/or failing to implement sufficient policies and procedures to prevent child sex abuse.

68. Defendants breached their duties by failing to take reasonable measures to make sure that policies and procedures to prevent child sex abuse were working.

69. Defendants breached their duties by failing to adequately inform families and children of the known risks of child sex abuse within the Archdiocese of New York.

70. Defendants breached their duties by holding out their employees and agents, including Rev. Msgr. Robert B. Mulcahey and Rev. Msgr. Miguel Juan, as safe and wholesome for children to be with.

71. Defendants breached their duties by failing to investigate risks of child molestation.

72. Defendants breached their duties by failing to have any outside agency test their safety procedures.

73. Defendants breached their duties by failing to protect the children in their

programs from child sex abuse and failing to adhere to the applicable standard of care for child safety.

74. Defendants breached their duties by failing to investigate the amount and type of information necessary to represent their institutions, programs, and leaders and people as safe.

75. Defendants breached their duties by failing to respond to and/or investigate information of improper conduct of employees or agents with children, including Rev. Msgr. Robert B. Mulcahey and Rev. Msgr. Miguel Juan.

76. Defendants breached their duties by failing to properly train their employees to identify signs of child molestation by fellow employees.

77. Defendants breached their duty to use ordinary care in determining whether their facilities were safe and/or to determine whether they had sufficient information to represent its facilities as safe.

78. Defendants breached their duty of care by maintaining Rev. Msgr. Robert B. Mulcahey and Rev. Msgr. Miguel Juan at their facilities.

79. Defendants breached their duty of care by maintaining a dangerous condition on the premises of their facilities (i.e., priests Defendant knew or should have known posed a risk of pedophile harm to children).

80. Defendants breached their duty of care by holding out their facilities as a safe and moral place for children, which it was not.

81. Defendants breached their duty of care by failing to have sufficient policies and procedures to prevent abuse at their facilities.

82. Defendants breached their duty of care by failing to investigate risks at their facilities.

83. Defendants breached their duty of care by failing to properly train the workers at their facilities; failing to have any outside agency test its safety procedures.

84. Defendants breached their duties to Plaintiff by holding out clergy members, including Rev. Msgr. Robert B. Mulcahey and Rev. Msgr. Miguel Juan, as safe, moral, and trustworthy people and by failing to warn Plaintiff and his family of the risk that Rev. Msgr. Robert B. Mulcahey and Rev. Msgr. Miguel Juan posed and the known risks of child sexual abuse by clerics in general.

85. Defendants also failed to warn Plaintiff about any of the knowledge that Defendants had about child sex abuse perpetrated by clergy or Rev. Msgr. Robert B. Mulcahey and Rev. Msgr. Miguel Juan.

86. Defendants breached their duties to Plaintiff by failing to report Rev. Msgr. Robert B. Mulcahey and Rev. Msgr. Miguel Juan's abuse of children to the police and law enforcement.

87. Defendants further breached their duties by hiding a pedophile and engaging in a cover-up of abuse perpetrated by Rev. Msgr. Robert B. Mulcahey and Rev. Msgr. Miguel Juan.

88. Defendants knew or should have known that some of the leaders and people working at Catholic institutions within the Archdiocese of New York were not safe for children.

89. Defendants knew or should have known that it did not have sufficient information about whether or not its leaders and people working at Catholic institutions within the Archdiocese of New York were safe to be around children.

90. Defendants knew or should have known that there was a risk of child sex abuse for children participating in Catholic programs and activities within the Archdiocese of

New York.

91. Defendants knew or should have known that they did not have sufficient information about whether or not there was a risk of child sex abuse for children participating in Catholic programs and activities within the Archdiocese of New York.

92. Defendants knew or should have known that they had other agents who had sexually molested children.

93. Defendants knew or should have known that child molesters have high rate of recidivism.

94. Defendants knew or should have known that there was a specific danger of child sex abuse for children participating in Defendants' youth programs.

95. Defendants held their leaders and agents out as people of high morals, as possessing immense power, teaching families and to obey these leaders and agents, teaching families and children to respect and revere these leaders and agents, soliciting youth and families to its programs, schools, marketing to youth and families, recruiting youth and families, and holding out the people that worked in the programs as safe for children/youth.

96. Defendants made negligent representations to Plaintiff and his family during each and every year of his minority. Plaintiff and/or his family relied upon these representations, which resulted in Plaintiff being put in a vulnerable situation with Rev. Msgr. Robert B. Mulcahey and Rev. Msgr. Miguel Juan who harmed him.

97. At all times material, Defendants controlled the premises where Rev. Msgr. Robert B. Mulcahey and Rev. Msgr. Miguel Juan performed as teachers and priests.

98. At all times material, Defendants had the power to terminate the employment of Rev. Msgr. Robert B. Mulcahey and Rev. Msgr. Miguel Juan.

99. As a direct result of Defendants' negligence, gross negligence, breached duties, sexual abuse, sexual exploitation, and Defendants' conduct, Plaintiff has suffered and will continue to suffer the severe injuries and damages described herein.

100. By reason of the foregoing, Defendants are liable to Plaintiff for compensatory damages, and for punitive damages, together with interest and costs.

SECOND CAUSE OF ACTION

NEGLIGENT HIRING/RETENTION/SUPERVISION/DIRECTION AGAINST DEFENDANTS

101. Plaintiff realleges and incorporates all previous paragraphs as if set forth fully herein.

102. At all times material, Defendants, by and through their agents, managers, employees, and directors, owed a duty to Plaintiff to use reasonable care to protect his safety, care, well-being and health while he was under the custody or in the presence of Defendants. These duties encompassed the use of reasonable care in the retention and supervision of Rev. Msgr. Robert B. Mulcahey and Rev. Msgr. Miguel Juan and otherwise providing a safe environment for children.

103. Prior to the sexual misconduct perpetrated by Rev. Msgr. Robert B. Mulcahey and Rev. Msgr. Miguel Juan upon Plaintiff, Defendants knew, or in the exercise of reasonable care, should have known, of the general problem of Catholic clergy engaging in sexual misconduct with children who were in Archdiocese of New York, St. Luke's Roman Catholic Church and Saint Luke School.

104. Prior to sexual misconduct perpetrated by Rev. Msgr. Robert B. Mulcahey and Rev. Msgr. Miguel Juan upon Plaintiff, Defendants knew, or in the exercise of reasonable care, should have known, that Rev. Msgr. Robert B. Mulcahey and Rev. Msgr. Miguel Juan was unfit for the duties assigned to them, that they did not exhibit appropriate behavior with children, and

otherwise posed a risk of perpetrating unwanted sexual contact upon children.

105. Given actual or constructive knowledge of Rev. Msgr. Robert B. Mulcahey's and Rev. Msgr. Miguel Juan's dangerous propensities specifically, Defendants had a duty to act reasonably in all decisions relating to their supervision and retention as an employee.

106. Defendants failed to exercise reasonable care in one or more of their decisions to supervise and retain Rev. Msgr. Robert B. Mulcahey and Rev. Msgr. Miguel Juan and therefore exposed Plaintiff to an unreasonable risk of harm.

107. Defendants affirmed and ratified Rev. Msgr. Robert B. Mulcahey's and Rev. Msgr. Miguel Juan's misconduct with Plaintiff. Given the actual and constructive knowledge of the likelihood that Rev. Msgr. Robert B. Mulcahey, Rev. Msgr. Miguel Juan, and/or other clergy would engage children in unwanted sexual contact, the unwanted sexual contact of Plaintiff was reasonably foreseeable to Defendants.

108. Defendants and their agents had superior knowledge of the likelihood that Rev. Msgr. Robert B. Mulcahey and Rev. Msgr. Miguel Juan would engage in unwanted sexual conduct with children that they encountered in their positions as teachers and priests and had a duty to take precautions to lessen the risk that Plaintiff would be the victim of unwanted sexual contact.

109. At all relevant times, Defendants' acts and omissions created an environment which fostered unwanted sexual contact and exploitation against the people they had a duty to protect, including Plaintiff.

110. At all relevant times, Defendants had inadequate policies and procedures to protect children entrusted to its care and protection, including Plaintiff, which substantially contributed to the creation of a dangerous environment.

111. As direct and proximate result of the negligence of Defendants, Plaintiff has suffered and will continue to suffer the severe injuries and damages described herein.

112. By reason of the foregoing, Defendants are liable to Plaintiff for compensatory damages, and for punitive damages, together with interest and costs.

THIRD CAUSE OF ACTION

RESPONDEAT SUPERIOR/VICARIOUS LIABILITY AGAINST DEFENDANTS

113. Plaintiff realleges and incorporates all previous paragraphs as if set forth fully herein.

114. Among other duties, Defendants employed Rev. Msgr. Robert B. Mulcahey and Rev. Msgr. Miguel Juan to operate programs, including education, sports, and spiritual counseling programs at Saint Luke School.

115. At times material, Rev. Msgr. Robert B. Mulcahey and Rev. Msgr. Miguel Juan were on duty as a priest 24 hours per day, seven days per week.

116. At all times material, Rev. Msgr. Robert B. Mulcahey and Rev. Msgr. Miguel Juan remained under the direct supervision, employ, and control of Defendants.

117. At all times material, Defendants had the right to control the means and manner of Rev. Msgr. Robert B. Mulcahey's and Rev. Msgr. Miguel Juan's performance.

118. At all times material, Defendants paid Rev. Msgr. Robert B. Mulcahey and Rev. Msgr. Miguel Juan's salaries and paid for their health insurance and other benefits.

119. At all times material, Defendants furnished offices and other materials; supplies, and tools required for Rev. Msgr. Robert B. Mulcahey and Rev. Msgr. Miguel Juan to perform in their positions as priests.

120. At all times material, Defendants controlled the premises where Rev. Msgr. Robert B. Mulcahey and Rev. Msgr. Miguel Juan performed as priests.

121. At all times material, Defendants had the power to terminate the employment of Rev. Msgr. Robert B. Mulcahey and Rev. Msgr. Miguel Juan.

122. Defendants created a master-servant relationship with Rev. Msgr. Robert B. Mulcahey and Rev. Msgr. Miguel Juan, employing them to interact with and supervise children participating in programs at Saint Luke School.

123. The unwanted contact by Rev. Msgr. Robert B. Mulcahey and Rev. Msgr. Miguel Juan upon Plaintiff occurred during their regular working hours and at the place of their employment while performing duties of priests on behalf of their employer.

124. The sexual contact by Rev. Msgr. Robert B. Mulcahey and Rev. Msgr. Miguel Juan occurred in the course and scope of their employment with Defendants.

125. The sexual contact by Rev. Msgr. Robert B. Mulcahey and Rev. Msgr. Miguel Juan was generally foreseeable to Defendants.

126. The sexual contact by Rev. Msgr. Robert B. Mulcahey and Rev. Msgr. Miguel Juan was closely connected to what they were employed to do as priests, and/or was otherwise naturally incidental to their job duties.

127. Rev. Msgr. Robert B. Mulcahey's and Rev. Msgr. Miguel Juan's conduct was motivated, at least in part, by desire to serve their employer's business interests or otherwise meet the objectives of their employment, however misguided.

128. Alternatively, Rev. Msgr. Robert B. Mulcahey's and Rev. Msgr. Miguel Juan's conduct constituted an authorized, minor deviation from their employment that was authorized and/or ratified by Defendants.

129. As a direct and proximate result of Rev. Msgr. Robert B. Mulcahey's and Rev. Msgr. Miguel Juan's conduct, Plaintiff has suffered and will continue to suffer the severe injuries

and damages described herein.

130. By reason of the foregoing, Defendants are liable to Plaintiff for compensatory damages, and for punitive damages, together with interest and costs.

FOURTH CAUSE OF ACTION

PREMISES LIABILITY AGAINST DEFENDANT ARCHDIOCESE OF NEW YORK

131. Plaintiff realleges and incorporates all previous paragraphs as if set forth fully herein.

132. Plaintiff was a business invitee of Defendant Archdiocese of New York when Rev. Msgr. Robert B. Mulcahey and Rev. Msgr. Miguel Juan engaged him in unwanted sexual contact.

133. Defendant Archdiocese of New York owed Plaintiff a duty to protect him from dangerous conditions on its premises that it knew about, or in the exercise of reasonable could have discovered.

134. Defendant Archdiocese of New York owed Plaintiff a duty to provide a reasonably safe environment where he would be free from the threat of unwanted sexual contact while on Defendant Archdiocese of New York 's premises.

135. Defendant Archdiocese of New York owed Plaintiff a duty to take reasonable precautions to ensure his safety while on the premises of Defendant.

136. Prior to the sexual misconduct perpetrated by Rev. Msgr. Robert B. Mulcahey and Rev. Msgr. Miguel Juan upon Plaintiff, Defendant Archdiocese of New York knew, or in the exercise of reasonable care, should have known, of the general problem of priests and other clergy engaging in sexual misconduct with children.

137. Prior to the sexual misconduct perpetrated by Rev. Msgr. Robert B. Mulcahey and Rev. Msgr. Miguel Juan upon Plaintiff, Defendant Archdiocese of New York knew, or in the

exercise of reasonable care, should have known, that Rev. Msgr. Robert B. Mulcahey and Rev. Msgr. Miguel Juan were unfit for the intimate duties assigned to them, that they did not exhibit appropriate behavior with children, and otherwise posed a risk of perpetrating unwanted sexual contact upon children.

138. Defendant Archdiocese of New York breached the duty owed to Plaintiff by failing to make the premises reasonably safe for Plaintiff despite what they knew or should have known about the existence of a potential threat of harm to Plaintiff on its premises.

139. Defendant Archdiocese of New York breached the duty it owed to Plaintiff by failing to warn Plaintiff of the dangers and risks involved in participating in programs at Saint Luke School given its superior knowledge of the potential risk of harm to Plaintiff.

140. At all relevant times, Defendant Archdiocese of New York had inadequate policies and procedures to protect children entrusted to its care and protection, including Plaintiff, which substantially contributed to the creation of a dangerous environment.

141. As direct and proximate result of the negligence of Defendant Archdiocese of New York, Plaintiff has suffered and will continue to suffer the severe injuries and damages described herein.

142. By reason of the foregoing, Defendants are liable to Plaintiff for compensatory damages, and for punitive damages, together with interest and costs.

FIFTH CAUSE OF ACTION
BREACH OF FIDUCIARY DUTY AGAINST DEFENDANTS

143. Plaintiff realleges and incorporates all previous paragraphs as if set forth fully herein.

144. There exists a fiduciary relationship of trust, confidence, and reliance between Plaintiff and Defendants. This relationship is based on the entrustment of Plaintiff while he was

a minor child to the care and supervision of the Defendants. This entrustment of Plaintiff to the care and supervision of the Defendants while Plaintiff was a minor child required Defendants to assume a fiduciary relationship and to act in the best interest of Plaintiff as well as to protect him while he was a minor and vulnerable child.

145. Pursuant to their fiduciary relationship, Defendants were entrusted with the well-being, care and safety of Plaintiff.

146. Pursuant to their fiduciary relationship, Defendants assumed a duty to act in the best interest of Plaintiff.

147. By holding Rev. Msgr. Robert B. Mulcahey and Rev. Msgr. Miguel Juan out as safe to work with children, and by undertaking the custody, supervision of and/or care of the minor Plaintiff, Defendants entered into a fiduciary relationship with Plaintiff. As a result of Plaintiff being a minor, and by Defendants undertaking the care and guidance of the then vulnerable Plaintiff, Defendants held a position of empowerment over Plaintiff.

148. Defendants, by holding themselves out as being able to provide safe environment for children, solicited and/or accepted this position of empowerment. This empowerment prevented Plaintiffs from effectively protecting himself, and Defendants thus entered into a fiduciary relationship with Plaintiff.

149. By holding itself out as a safe, moral, and trusted institution to Plaintiff's parents, Defendants induced Plaintiff's parents to entrust their child to Defendants and thereby deprived Plaintiff of the protection of his family.

150. Defendants breached their fiduciary duty to Plaintiff.

151. At all times material hereto, Defendants' actions and/or inactions were willful, wanton, malicious, reckless, and outrageous in their disregard for the rights and safety of

Plaintiff.

152. As a direct result of said conduct, Plaintiff has suffered the injuries and damages described herein.

153. By reason of the foregoing, Defendants are liable to Plaintiff for compensatory damages and for punitive damages together with interest and costs.

SIXTH CAUSE OF ACTION

NEGLIGENT INFILCTION OF EMOTIONAL DISTRESS AGAINST DEFENDANTS

154. Plaintiff realleges and incorporates all previous paragraphs as if set forth fully herein.

155. As described above, the actions of Defendants, their predecessors and/or successors, agents, servants and/or employees were conducted in a negligent and/or grossly negligent manner.

156. Defendants' actions endangered Plaintiff's safety and caused him to fear for his own safety.

157. As a direct and proximate result of Defendants' actions, which included but were not limited to negligent and/or grossly negligent conduct, Plaintiff suffered the severe injuries and damages described herein, including but not limited to, mental and emotional distress.

158. By reason of the foregoing, Defendants are liable to Plaintiff for compensatory damages, and for punitive damages, together with interest and costs.

SEVENTH CAUSE OF ACTION

BREACH OF DUTY *IN LOCO PARENTIS* AGAINST DEFENDANTS

159. Plaintiff realleges and incorporates all previous paragraphs as if set forth fully herein.

160. While he was a minor, Plaintiff was entrusted by his parents to the control of

Defendants for the purposes of *inter alia* providing Plaintiff with appropriate guidance and opportunity to enjoy educational, youth, and recreational activities under reasonable adult supervision. During the times that Plaintiff was a student at Saint Luke School, he was under the supervision and control of Defendants. The Defendants owe, and owed, a duty to children entrusted to them, including Plaintiff, to act *in loco parentis* and to prevent foreseeable injuries.

161. Defendants breached their duty to act *in loco parentis*.

162. At all times material hereto, Defendants' actions were willful, wanton, malicious, reckless, negligent, grossly negligent and/or outrageous in their disregard for the rights and safety of Plaintiff.

163. As a direct result of Defendants' conduct, Plaintiff has suffered the injuries and damages described herein.

164. By reason of the foregoing, Defendants are liable to Plaintiff for compensatory damages, and for punitive damages, together with interest and costs.

EIGHTH CAUSE OF ACTION

BREACH OF STATUTORY DUTY TO REPORT ABUSE UNDER SOC. SERV. LAW §§ 413, 420 AGAINST DEFENDANTS

165. Plaintiff realleges and incorporates all previous paragraphs as if set forth fully herein.

166. Pursuant to the N.Y. Soc. Serv. Law §§ 413 and 420, Defendants had a statutorily imposed duty to report reasonable suspicion of abuse of children in their care.

167. Defendants breached that duty by knowingly and willfully failing to report reasonable suspicion of abuse by Rev. Msgr. Robert B. Mulcahey and Rev. Msgr. Miguel Juan of children within their care.

168. As a direct and/or indirect result of said conduct, Plaintiff has suffered injuries

and damages described herein.

169. By reason of the foregoing, Defendants are liable to Plaintiff for compensatory damages and for punitive damages together with interest and costs.

WHEREFORE Plaintiff demands judgements against Defendants on each cause of action as follows:

- A. Awarding compensatory damages in an amount to be proved at trial but in any event in an amount that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction;
- B. Awarding punitive damages to the extent permitted by law;
- C. Awarding prejudgment interest to the extent permitted by law;
- D. Awarding costs and fees of this action, including attorneys' fees to the extent permitted by law;
- E. Awarding such other and further relief for Plaintiff as to this Court may seem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all issues so triable

Dated: New York, New York
October 28, 2019

Respectfully Submitted



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ATTORNEY VERIFICATION

STATE OF NEW YORK)
)
COUNTY OF NEW YORK) ss:

CHRISTOPHER M. SELESKI, an attorney duly admitted to practice in the State of New York, affirms under penalty of perjury, that he has read the foregoing COMPLAINT and knows the contents thereof; that the same is true to the affirmant's own knowledge, except at to those matters therein stated to be on information and belief and as to these matters affirmant believes them to be true.

The undersigned further states that the reason this affirmation is made by the affirmant and not be the plaintiff is that the plaintiff resides in a county other than the county in which affirmant maintains his office.

The grounds of affirmant's belief as to all matters not stated to be on affirmant's knowledge are as follows: Discussion with the client and co-counsel, and the examination of contents of the file.

Dated: New York, New York
October 28, 2019



CHRISTOPHER M. SELESKI